

NO. 83-2065⁽³⁾

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

Office - Supreme Court, U.S.

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ROLAND A. JONES,
Petitioner,

v.

THE STATE OF GEORGIA, DEPARTMENT
OF HUMAN RESOURCES, et al.,
Respondents,

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE NO.
TABLE OF AUTHORITIES.	ii
I. ISSUE PRESENTED	1
II. STATEMENT OF THE CASE	2
III. STATEMENT OF THE FACTS.	5
IV. ARGUMENT.	8
Summary of Argument	
A. The dismissal of Petitioner's action for lack of subject matter jurisdiction was proper given Petitioner's failure to assert a property interest in continued public employment.	11
B. Petitioner has failed to assert a liberty interest which would confer subject matter jurisdiction on a federal court and thus, the dismissal should be affirmed	19
V. CONCLUSION	23

TABLE OF AUTHORITIES

CASE LAW

1. Bishop v. Wood,
426 U.S. 341 (1976). . 14, 15,
.18, 22
2. Board of Regents of State Colleges
v. Roth;
408 U.S. 571 (1972) . . 12,21
3. Codd v. Belger,
429 U.S. 624 (1977)22
4. Parratt v. Taylor,
451 U.S. 527 (1981)15
5. Whittaker v. Department of Human
Resources;
30 Fed. R. Serv. 2d 931
(N.D.Ga. 1980). 6

OTHER AUTHORITY

1. O.C.G.A. § 45-2-8(a)16
2. O.C.G.A. § 45-20-2(16), (17). . 6
3. Rules and Regulations of the
State Personnel Board . . . 6, 17
4. 42 U.S.C. § 1983. 2

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I. Issue Presented

Whether the Eleventh Circuit Court of Appeals correctly affirmed the district court's dismissal of the Petitioner's complaint for lack of subject matter jurisdiction due to his failure to establish a property or liberty interest in his continued public employment.

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II. Statement of the Case

Petitioner filed a civil rights action, pursuant to 42 U.S.C. § 1983, challenging his dismissal as a "working test" employee of Respondent Georgia Department of Human Resources. Respondents filed a Motion to Dismiss on the grounds that the Court lacked subject matter jurisdiction and the Complaint failed to state a claim upon which relief could be granted because Petitioner had failed to allege the deprivation of any federally protected interest. By an Order entered on the 11th day of March, 1983, by Judge Marvin Shoob, the United States Court, Northern District of Georgia, dismissed the action of Respondents' Motion.

Subsequently, Petitioner filed a Motion for Reconsideration of the Court's dismissal of his action. Respondents filed their brief respectfully requesting that that Motion be denied as the Petitioner had failed to allege any material evidence or legal error which would give cause to the Court to alter its previous judgment and asserting that it must therefore stand as entered.

By an Order dated April 21, 1983, in a decision by Judge Marvin Shoob, the United States District Court, Northern District of Georgia, denied Petitioner's Motion for Reconsideration of the grounds that Petitioner's failed to prove any new grounds to disturb the court's finding

that he had no property interest in his continued employment with the Respondent Georgia Department of Human Resources. Petitioner subsequently filed a Notice of Appeal with the Eleventh Circuit Court of Appeals on May 16, 1983. Petitioner alleged that it was improper for the Court to not recognize jurisdiction over his claim because of his failure to establish a property interest in continued employment. Petitioner asserted that the court should reach the merits because of the alleged discriminatory actions of the Respondents and that it was error to not do so based on the sole ground that he has not established a property interest. Petitioner further asserted that he has a liberty interest at stake which

the Court has failed to consider by its dismissal.

By a decision dated February 21, 1984, the Eleventh Circuit Court of Appeals, by unanimous decision, affirmed the district court's decision finding that a probationary public employee who had been dismissed during a six month "working test" had not been unconstitutionally deprived of any property or liberty interest which would justify seeking relief within a federal forum.

III. Statement of the Facts

Petitioner has filed this civil rights action challenging his dismissal as a "working test" employee of Respondent Georgia Department of Human Resources. Under Rules 11.100 and 11.200 of the State Personnel

Board (Exhibit B-20 of Plaintiff/Petitioner's Complaint, R-128), State employees such as the Petitioner must satisfactorily complete a "working test" before being considered for "permanent status." A State employer is free to terminate the services of an employee at any time during the "working test" where the employee fails to perform satisfactorily, so long as the employee is notified in writing in advance of the date on which his services are to be terminated. See Personnel Board Rule 12.201.1) Exhibit B-21 of Complaint, R-132). See also O.C.G.A. § 45-20-2(16), (17); Ga. Code Ann. § 40-2202(a)(15), (16); Whittaker v. Department of Human Resources, 30 Fed. R. Serv. 2d 931 (N.D.Ga. 1980)



(copy attached to Defendants' Motion to Dismiss, R-198-200).

Petitioner alleges that he is a former employee of Respondent Georgia Department of Human Resources and that his termination during his "working test" was in contravention of certain rules and regulations of the State Personnel Board, which are attached as exhibits to his Complaint. Petitioner alleges that the failure of Respondents to retain his services at the end of his probationary period was the result of certain discriminatory motives rather than reflecting a routine personnel decision. Respondents state that their failure to retain the services of Petitioner was an ordinary exercise of an employer's discretion to not retain a

probationary employee on a permanent status. The decision to not retain Petitioner was a routine personnel decision and is not in conflict with any legal or constitutional standard.

IV. Argument

Summary of Argument

The United States District Court, Northern District of Georgia, dismissed Petitioner's action finding that it was beyond the limited jurisdiction of the court as the Petitioner had failed to allege any federally protected interest.

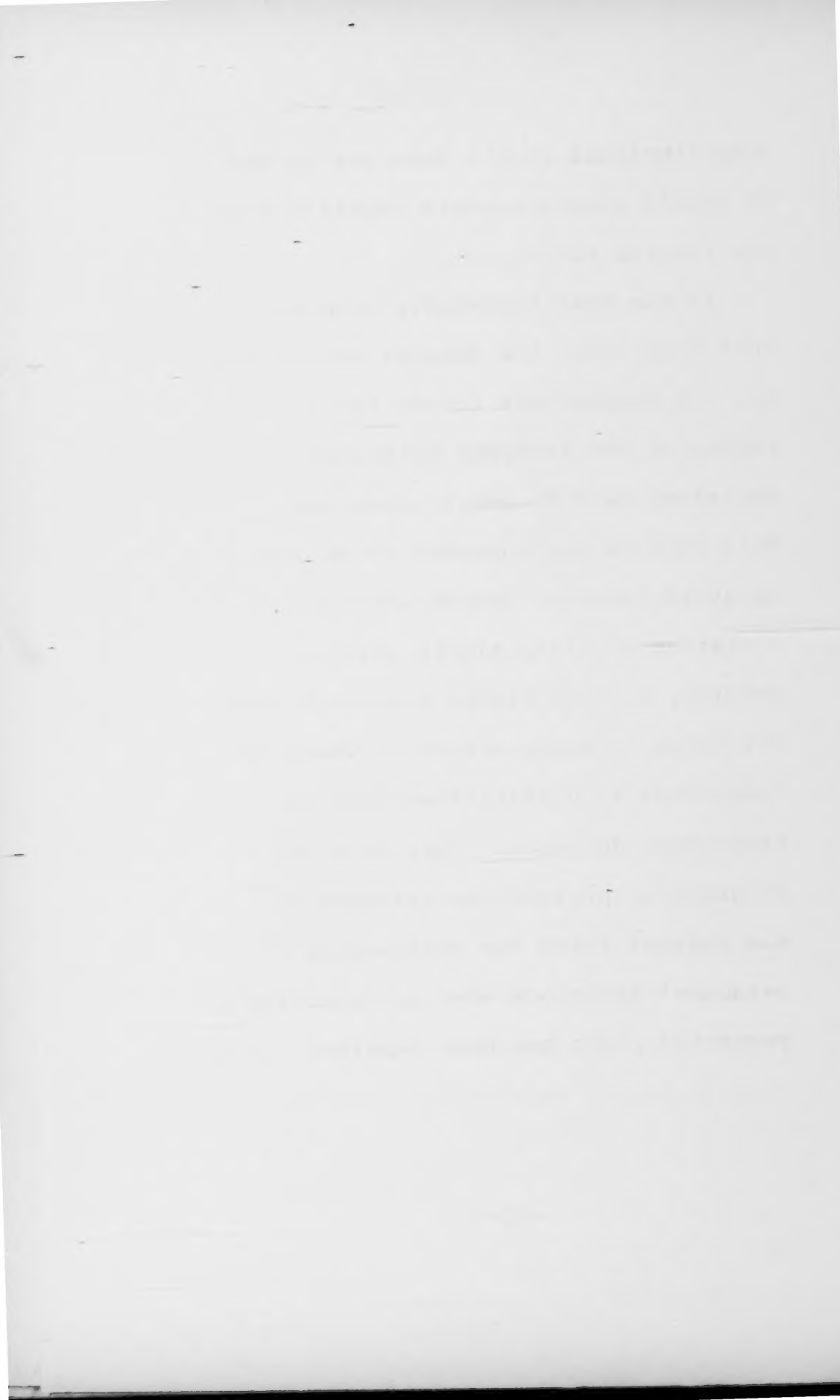
Petitioner has alleged that his termination was the result of the supposed violation of a number of rules of the State Personnel Board of Georgia but has nowhere alleged the deprivation of any rights sufficient

to secure federal judicial review.

In order to secure review in the federal forum, Petitioner must sufficiently allege that he has a "liberty" of a "property" interest in his continued public employment which would warrant constitutional protection. The determination of whether such an interest exists is dependent upon the state law. Although Petitioner has alleged the violation of various rules and regulations of the State Personnel Board in his dismissal, Petitioner has failed to state a claim which falls within the limited subject matter jurisdiction of the federal courts. Even if the Respondents did apply the wrong regulation, a mistaken personnel decision not implicating federal

constitutional rights does not in and of itself create a claim cognizable in the federal forum.

It has been repeatedly held by this Court that the federal courts are not the appropriate forums for a review of the everyday personnel decisions made by public agencies. This rule is not intended to be used to avoid judicial review where a violation of civil rights exists; however, a civil rights violation does not exist in every situation where an individual is dissatisfied with an employment decision. This rule was intended to prevent the reliance on the federal forum for challenging personnel decisions when no federally protected right has been deprived.



This Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291.

A.

THE DISMISSAL OF APPELLANT'S ACTION FOR LACK OF SUBJECT MATTER JURISDICTION WAS PROPER GIVEN APPELLANT'S FAILURE TO ASSERT A PROPERTY INTEREST IN CONTINUED PUBLIC EMPLOYMENT.

The fact that the Rules and Regulations of the State Personnel Board might provide for certain procedures for terminating a "working test" employee does not mean that Petitioner has a federally protected interest in assuring that State officials comply with the Board's guidelines. A federal forum is not an appropriate forum for reviewing

everyday personnel decisions of public agencies, even if they are ill-advised, if no constitutionally protected interest is at stake.

The United States District Court, Northern District of Georgia, dismissed this action recognizing that it would only have jurisdiction over Petitioner's claim, that Respondents violated the Rules and Regulations of the State Personnel Board in dismissing him, only if he had a "liberty" or "property" interest in his continued public employment to warrant constitutional protection. Board of Regents of State Colleges v. Roth, 408 U.S. 571, 579 (1972). In reviewing the applicable State law, the district court held that there was nothing to confer a property right in

continued employment. Even assuming that Respondents violated the Rules and Regulations of the State Personnel Board in a dismissal of Petitioner, merely conditioning an employee's removal on compliance with certain procedures does not imply a right to continued employment. In reconsidering the issue of whether Petitioner has alleged deprivation of any rights sufficient to secure federal judicial review, no protected interest is apparent even by a liberal reading of Petitioner's various pleadings; in fact, Petitioner's brief does not contest the district court's finding that a property interest was not asserted but raises the issue of whether a court can fail to review the alleged discriminatory acts of the

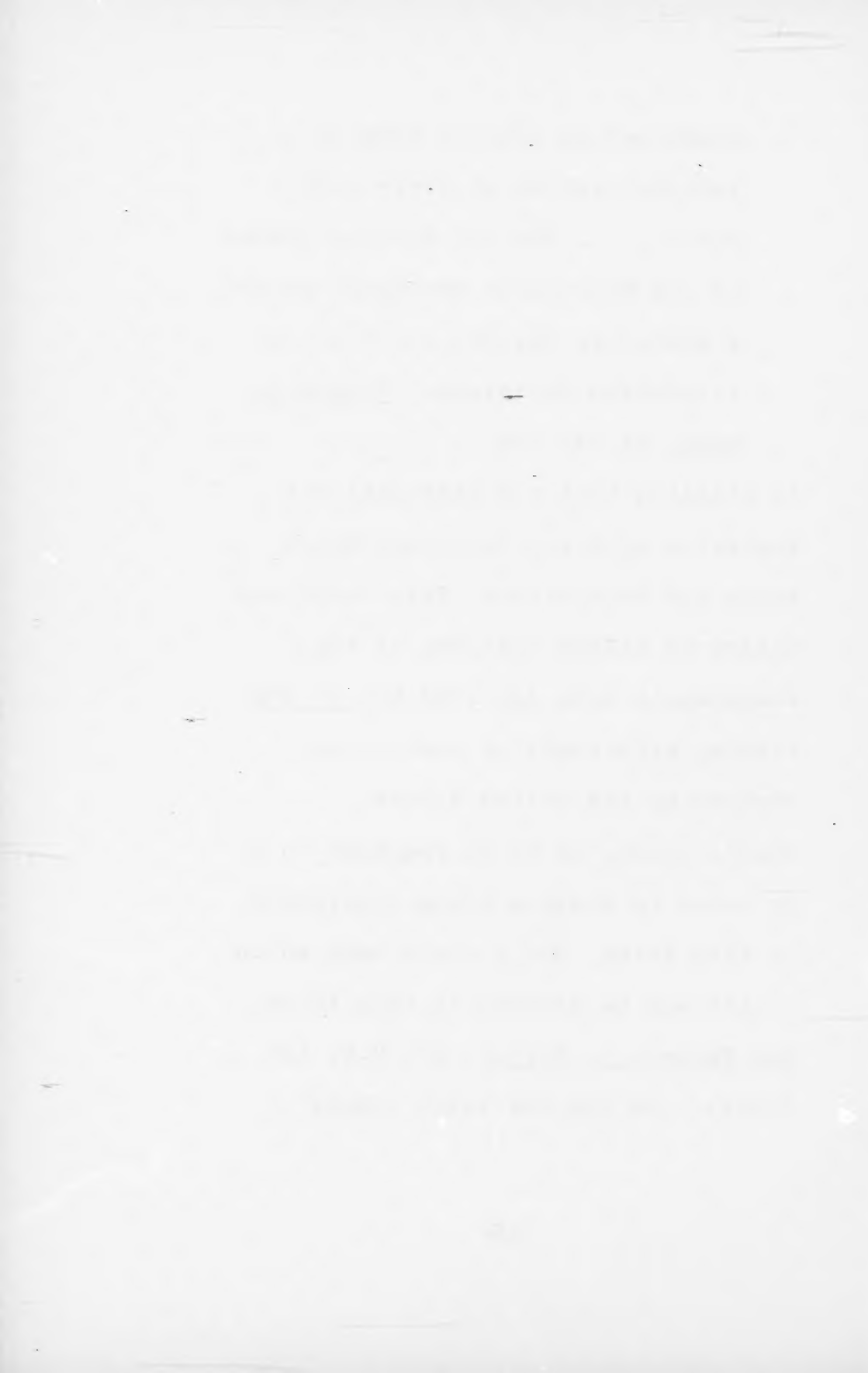
Respondents merely because no property interest exists.

Petitioner's allegations that Respondents violated the Rules and Regulations of the State Personnel Board in dismissing him are entirely insufficient to secure jurisdiction in a federal forum. As this Court has ruled in Bishop v. Wood, 426 U.S. 341 (1976):

"The federal court is not the appropriate forum in which to review the multitude of personnel decision that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day to day administration of our affairs. The United States Constitution cannot feasibly be

construed to require federal
judicial review of every such
error . . . The Due Process Clause
of the Fourteenth Amendment is not
a guarantee against incorrect or
illadvised decisions." Bishop v.
Wood, at 349-350.

In alleging that his dismissal was
violative of State Personnel Board
Rules and Regulations, Petitioner has
failed to allege that any of the
Respondents have deprived him of any
rights, privileges or immunities
secured by the United States
Constitution, as he is required to do
in order to state a claim cognizable
in this forum, and a claim upon which
relief may be granted in this forum.
See Parratt v. Taylor, 451 U.S. 527
(1981). As the Complaint itself



reveals, Petitioner was a "working test" employee of Respondent Department of Human Resources at the time when he was terminated. As such, he had no property interest in continuing employment with the Department of Human Resources. See O.C.G.A. § 45-2-8(a); Ga. Code Ann. § 40-2207(a), which conditions dismissal of "permanent status" employees only, upon compliance with the Rules and Regulations of the State Personnel Board. As a matter of State law, a working test employee, on the other hand, may be dismissed by a State employer at any time during the working test, and has no right to seek relief pursuant to the appeal procedures in the Rules and Regulations of the State Personnel

Board. See Personnel Board Rule 12.300 (Exhibit B-21 of Plaintiff/Petitioner's Complaint, R-132).

It is thus clear as a matter of State law that the Petitioner, a working test employee, had no property interest in continuing employment with the Department of Human Resources, and thus, suffered no deprivation which might offend Petitioner's constitutional rights to due process. Furthermore, Respondents find no allegations sufficient to indicate that the termination of Petitioner by the Department of Human Resources implicates any other right, privilege or immunity secured by the united States Constitution.



Petitioner is correct in stating that the harsh fact of the Bishop v. Wood decision is not intended to be used to avoid judicial review where a violation of civil rights exists; however, Petitioner fails to note that a civil rights violation does not exist in every situation where an individual is dissatisfied with an employment decision and the rule of Bishop v. Wood was intended to prevent reliance on the federal forum for challenging personnel decisions when no federally protected right has been deprived. As recognized by the Eleventh Circuit Court, the claims of the Petitioner are foreclosed by the clear precedents of this Court.

B.

APPELLANT HAS FAILED TO ASSERT A
LIBERTY INTEREST WHICH WOULD
CONFER SUBJECT MATTER JURISDICTION
ON A FEDERAL COURT AND THUS, THE
DISMISSAL SHOULD BE AFFIRMED.

Petitioner has further asserted
that the district court's dismissal
for lack of subject matter
jurisdiction was erroneous because the
failure to retain him as a permanent
status employee constituted a
deprivation of a liberty interest.
Petitioner alleges that the employment
decision of Respondents has
stigmatized Petitioner's reputation.

Petitioner has not alleged that
the State has asserted any
stigmatizing reason for his firing or
otherwise acted in a manner which

would cause his good name or reputation to be jeopardized. Rather, Petitioner has merely asserted that the failure to have his employment continued is stigmatizing. Under the State law, as previously asserted, a State employer may terminate an employee such as the Petitioner at any time during the working test period. As held by the Court, this rule does not restrict the exercise of the employer's discretion to discharge a working test employee by any language such as for cause, which might imply a right to continued employment absent a finding of cause for the discharging reason. While the non-retention of an employee might make the employee somewhat less attractive to other employers, it has been recognized by

the United States Court that it would stretch the concept of due process too far:

"to suggest that a person is deprived of 'liberty' when he is simply not rehired in one job but remains as free as before to seek another." Board of Regents v. Roth, supra at 575.

When a public employee is not retained after completing a probationary period and his position is terminable at the will of the employer, he is not deprived of a constitutionally protected right when there is no disclosure of the reasons

THE UNIVERSITY OF CHICAGO

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FROM

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TO

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RE: [illegible]

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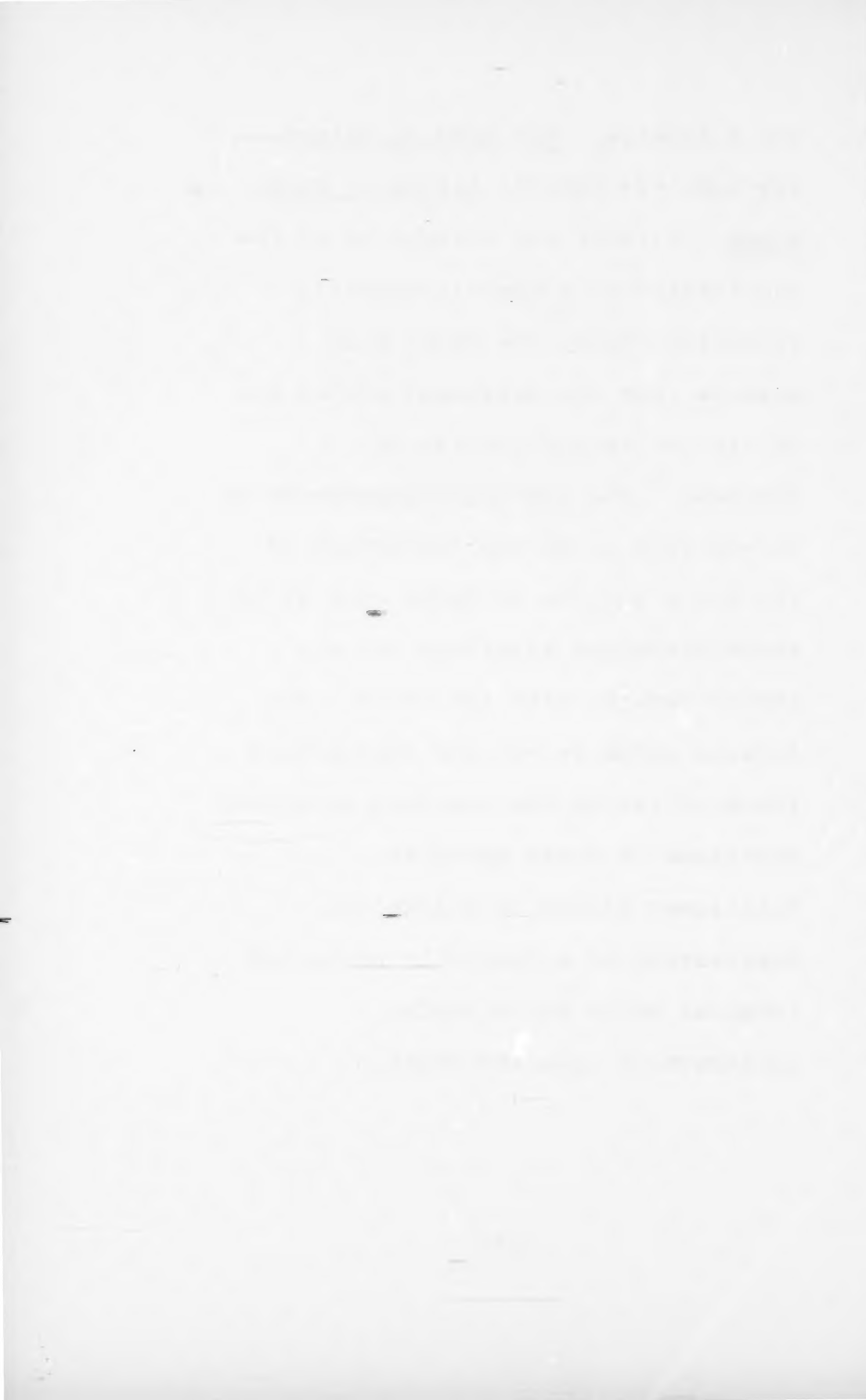
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for discharge. See Codd v. Belger,
429 U.S. 624 (1977); Bishop v. Wood,
supra. Without the allegation of the
deprivation of a constitutionally
protected right, the Court must
presume that the personnel action was
within the regular course of
business. The continued employment of
an employee is at the discretion of
the State and the ultimate control of
State personnel relations is, and
should remain, with the State. The
federal forum is not the appropriate
forum to review the everyday personnel
decisions of State agencies.
Petitioner failed to allege the
deprivation of a federally protected
interest which would confer
jurisdiction upon the Court.



IV. Conclusion

Petitioner has failed to allege that he has been deprived of any federally protected interest or otherwise allege the deprivation of any rights sufficient to secure federal judicial review. Rather, Petitioner has based his claim on his own personal dissatisfaction with the personnel decision of the Respondents to not continue his employment.

The ultimate control of State personnel relations should remain with the State and it should be at the discretion of the State to continue employment of an employee. Without the allegation of a deprivation of a property or liberty interest, the Court must presume that the personnel

decision was regular and even if
ill-advised, best corrected by means
other than a resort to a federal forum.

For the reasons cited herein,
Respondents respectfully request that
the decision below be affirmed as
Petitioner has failed to allege any
property or liberty interest which
would confer subject matter
jurisdiction upon the federal courts.

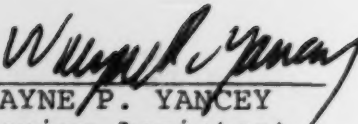
Respectfully
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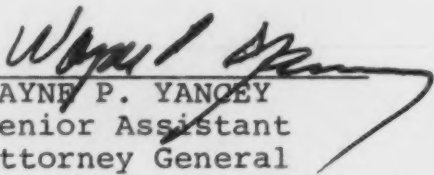


CERTIFICATE OF SERVICE

I do hereby certify that I have
this day served the within and
foregoing BRIEF, prior to filing the
same, by depositing a copy thereof,
postage prepaid, in the United States
Mail, properly addressed to the
following:

Mr. Roland A. Jones
1390 Heatherland Drive
Atlanta, Georgia 30331

This 12th day of October, 1984.


WAYNE P. YANCEY
Senior Assistant
Attorney General